

ANN BAVENDER*
 ANNE GOODWIN CRUMP
 VINCENT J. CURTIS, JR.
 PAUL J. FELDMAN
 FRANK R. JAZZO
 EUGENE M. LAWSON, JR.
 MITCHELL LAZARUS
 SUSAN A. MARSHALL*
 HARRY C. MARTIN
 RAYMOND J. QUIANZON
 LEONARD R. RAISH
 JAMES P. RILEY
 ALISON J. SHAPIRO
 KATHLEEN VICTORY
 JENNIFER DINE WAGNER*
 LILIANA E. WARD
 HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

April 1, 2002

RETIRED MEMBERS
 RICHARD HILDRETH
 GEORGE PETRUTSAS
 CONSULTANT FOR INTERNATIONAL AND
 INTERGOVERNMENTAL AFFAIRS
 SHELDON J. KRYS
 U. S. AMBASSADOR (ret.)
 OF COUNSEL
 EDWARD A. CAINE*
 DONALD J. EVANS
 EDWARD S. O'NEILL*
 WRITER'S DIRECT

(703) 812-0478
 shapiro@fhhlaw.com

RECEIVED

APR 01 2002

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 445 12th Street, S.W., Room TW-B204
 Washington, DC 20554

Re: **Reply to Opposition to Joint Petition for Reconsideration**
GN Docket No. 01-74 /
Television Channels 52-59

Dear Mr. Caton:

Transmitted herewith, on behalf of Pappas Telecasting of America, A California Limited Partnership, and Iberia Communications, LLC, are an original and eleven copies of its Reply to Opposition to Joint Petition for Reconsideration in the above-referenced proceeding.

An extra copy of this filing, marked 'Please Stamp and Return This Copy to Fletcher, Heald & Hildreth,' is enclosed. Please date-stamp this copy and return it with the messenger.

Should there be any questions regarding this matter, kindly communicate directly with the undersigned.

Very truly yours,
 FLETCHER, HEALD & HILDRETH, P.L.C.

Alison J. Shapiro
 Counsel for Pappas Telecasting of America,
 A California Limited Partnership, and
 Iberia Communications, LLC

Enclosure

cc: Parties on Certificate of Service (w/encl.)

No. of Copies rec'd 0+11
 List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

APR 01 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reallocation and Service Rules for)
698-746 MHz Spectrum Band)
)
(Television Channels 52-59))
)

GN Docket No. 01-74

To: The Commission

REPLY TO OPPOSITION TO JOINT PETITION FOR RECONSIDERATION

Pappas Telecasting of America, A California Limited Partnership ("Pappas") and Iberia Communications, LLC ("Iberia") hereby respectfully submit their Reply to Opposition to Joint Petition for Reconsideration of the Federal Communications Commission's ("FCC" or "Commission") *Report and Order*, FCC 01-364, released January 18, 2002, in the above-captioned proceeding ("*R&O*"). In support thereof, the following is stated:

On March 8, 2002, the Office of the Chief Technology Officer, Government of the District of Columbia ("OCTO") filed a Petition for Reconsideration seeking clarification of the *R&O* that public safety radio uses are permitted in the 698-746 MHz band, and that such eligible public safety applicants are not required to bid at auction. OCTO cites Paragraph 132 of the *R&O* which states:

132. Consistent with the approach taken for the Upper 700 MHz Commercial Band, we are permitting private radio uses in the Lower 700 MHz Band. [citation omitted] . In auctioning recaptured broadcast spectrum subject to Section 309(j)(14), Congress did not preclude use of the spectrum for private, internal communications. Our reallocation of the Lower 700 MHz band, therefore includes the ability to provide private fixed and mobile radio services.

The FCC's *R&O* appears to have considered the various uses of the Lower 700 MHz band and plainly permits private radio use. Furthermore, Congress has directed the FCC to specifically exempt public safety radio services, including private internal radio services used by state and local governments, from competitive bidding¹ and, accordingly, the FCC has implemented this exemption in its rules.² Thus, OCTO finds itself in the same position as noncommercial educational broadcasters ("NCE") who wish to apply for station licenses in the "unreserved" spectrum.

The National Public Radio decision³ ("*NPR*") mandated that the FCC establish procedures to be used to license unreserved channels in which both commercial and NCE broadcasters have an interest. Furthermore, the court in *NPR* held that an applicant's exemption from competitive bidding is based on the nature of the station that ultimately receives the license, not on the part of the spectrum in which the station operates.⁴ Consequently, the Commission released a Second Further Notice of Proposed Rulemaking⁵ seeking additional comments on the appropriate procedures to license unreserved channels. Comments in this proceeding are due to be filed with the FCC on April 15, 2002, and Reply Comments are due May 15, 2002. In light of the filing of OCTO's Petition for Reconsideration, it is clear that the FCC must not only consider

¹ See BBA 97 §309(j)(2)(A).

² See 47 C.F.R. Section 1.2102(b) (Section 1.2102(b) of the FCC's rules excludes from competitive bidding applications filed by public safety radio services).

³ *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001) ("*NPR*").

⁴ See *NPR*.

⁵ See, In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, FCC 02-44, Released February 25, 2002 (Second Further Notice of Proposed Rulemaking).

FCC must not only consider licensing procedures for NCE applicants, but also public safety radio applicants. However, it seems highly unlikely that the FCC will be able to resolve these issues by June 19, 2002, the scheduled auction date,⁶ particularly since there has been no public discussion of the issues raised by OCTO.⁷

As stated in its Joint Petition for Reconsideration, Pappas and Iberia seek reconsideration of the Commission's unjustified determination as set forth in the *R&O* that no further NTSC authorizations would be granted in the 52-59 range and that all pending petitions for new allotments within those channels will be dismissed. Oppositions were filed stating that the additional grants of applications and petitions on file with the Commission would have an unacceptable impact on the speed with which the DTV transition could move. While, Pappas and Iberia are aware of the constraints under which the Commission operates with regard to the Congressional mandate to clear the Lower 700 MHz band for new services, the grants of applications and petitions on file since 1996, would have little, if any, effect on the speed of the DTV transition. Moreover, the unresolved issues regarding NCE applicants and public safety radio applicants require careful consideration by the Commission. Neither Pappas nor Iberia see how the Commission can move forward with the auction until these issues are resolved.

⁶ See, Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, Public Notice, DA 02-563, Released March 20, 2002.

⁷ The Congressional mandate and the promulgating rules of the Commission prohibit requiring public safety radio applicants from participating in auction proceedings, including the filing of FCC Form 175.

For the reasons set forth herein, we respectfully request that the Commission reconsider its *R&O* and recognize that the practical aspects of postponing the lower 700 MHz auction (Channels 52-59) to a later date would not only result in a more efficient process, but would also be in the public interest.

Respectfully submitted,
PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED PARTNERSHIP

By: 

Vincent J. Curtis, Jr.
Anne Goodwin Crump
Alison J. Shapiro
Its Counsel

IBERIA COMMUNICATIONS, LLC

By: 

Howard M. Weiss
Its Counsel



Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703)812-0400

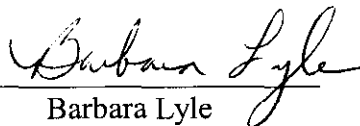
April 1, 2002

\\Shapiro\My Documents\VICTORY\Pappas\Reply 2002.04.01.ajs.wpd

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of a Reply to Opposition to Joint Petition for Reconsideration was sent this 1st day of April, 2002, by United States first-class mail, postage prepaid, to the following:

Nicholas P. Miller
William Malone
James R. Hobson
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Office of the Chief
Technology Officer


Barbara Lyle